MISSISSIPPI STATE AGENCIES SELF-INSURED WORKERS' COMPENSATION TRUST

Workers' Compensation E-Newsletter
April 2015

Welcome To Your New Quarterly E-Newsletter

Welcome to the first edition of the new Mississippi State Agencies Self-Insured Workers' Compensation Trust quarterly e-newsletter. Our goal is to educate and engage our membership in order to create safe work environments, give guidance in creating policy, and assist you in managing your risk. We will also keep you up to date on any matters that may affect the Trust and our members.

The Mississippi State Agencies Self-Insured Workers Compensation Trust exists to provide affordable workers' compensation coverage for the approximately 25,000 employees of the nearly 100 participating State agencies, boards and commissions. Working daily with CCMSI, our third party claims administrator, we strive to provide prompt and accurate claims processing, as well as comprehensive risk management services.

We want to ensure the newsletter content meets your needs. If you have comments, questions, topics or issues you would like addressed, please let us know. Your suggestion may help others do their jobs better and safer. Please e-mail your thoughts and ideas to Claire.Whittington@dfa.ms.gov.

Is Your Safety Program Working?

Every employer wants to avoid on-the-job accidents and reduce workers' compensation claims. Since your workers' compensation premium is based primarily on your claims experience, you can help reduce your premium through an effective safety program.

As the Trust's third party administrator, CCMSI provides loss control services at no cost to member agencies. These services include visits from a loss control consultant to review your loss history and safety policies. The consultant can also evaluate the work site, equipment, work practices and conduct safety training.

Someone in your organization should serve as safety manager, and be responsible for the implementation of a safety program. The safety manager should be someone who has the ability to motivate, educate and train employees. A safety program should include written rules and procedures to train new employees, require periodic inspections, investigate accidents, provide first-aid care and have a return-to-work program. Since many accidents are directly related to unsafe activities, it is the safety manager's responsibility to encourage employees to operate safely. The loss control consultants available through CCMSI are a great resource for your safety manager to develop a new safety program or fine tune an existing program.

CCMSI®

A safety program is only effective if it is communicated to your employees. It is vital that employees are trained on all aspects of your safety program as well as their individual responsibilities in the workplace. The more education and training you give your employees, the lower your exposure to workers' compensation claims.

For more information on CCMSI's loss control services, please call (800) 672-1108.

What Is Your Return-To-Work Program?

One important role in reducing litigation is an effective method of rehiring an injured employee or having an effective return-to-work program. These programs can help reduce premiums as well as reduce payouts to injured employees.

Remember that an employee is not required to return to work until released by a physician. It's essential that the physician, the injured employee and the employer coordinate and stay up to date on the injured employee's status. Consider offering light-duty jobs as well as obtaining return-to-work verification when appropriate.

Not only does a return-to-work program help lower your premium and reduce payouts, it also reduces the likelihood of attorney involvement. Make sure you are aware of all the rules required for rehiring and, although you are not required by law to rehire an injured employee, you should be aware that it is illegal to fire the employee as a result of a workers' compensation claim.

For more information on return-to-work programs, please call CCMSI at (800) 672-1108.

The Top 10 Bizarre Workers' Compensation Cases for 2014

This article is being reprinted with permission from LexisNexis. Thomas A. Robinson, J.D., the Feature National Columnist for the LexisNexis Workers' Compensation eNewsletter, is a leading commentator and expert on the law of workers' compensation.

For the past five or six years, I've shared with readers my annual list of bizarre workers' compensation cases for the prior year. In doing so, I reenact, at least in part, a tradition that my mentor, Arthur Larson, and I shared prior to his death some years ago. Each January, Arthur and I would meet in Arthur's home on Learned Place, near Duke University's campus and review our respective lists of unusual or bizarre workers' compensation cases reported during the previous 12 months. Usually our respective lists would overlap a bit, but he'd always have several with truly quirky fact patterns that I had missed. One thing we always kept in mind: one must always be respectful of the fact that while a case might be bizarre in an academic sense, it was intensely real. The cases mentioned below aren't law school hypotheticals; they affected real lives and real families. And so, to continue in the spirit of that January ritual, here follows my list (in no particular order) of 10 bizarre workers' compensation cases during 2014. I'm gratified that the annual list's popularity has grown over the years. It's even been featured on National Public Radio's Saturday morning show, "Wait, Wait … Don't Tell Me." If you know of other cases that should have been included in this year's list, let me know. Send them—along with questions or comments — to trob@workcompwriter.com.

CASE #1: Undocumented Worker's Fatal Heart Attack While Fleeing Immigration Service Raid on Employer Was Not Compensable

The death of a lumber mill employee, who came to the United States from Mexico, who had used falsified documentation to obtain employment, and who suffered a fatal heart attack as he and other undocumented workers ran from the employer's premises in an effort to avoid what they thought was an imminent raid by officials from the Immigration and Naturalization Service, did not arise out of the employee's employment, held the Court of Appeals of North Carolina. Moreover, the appellate court agreed with the state's Industrial Commission that competent evidence supported the state Industrial Commission's finding that there was no increased risk to the employee of an immigration raid as part of his employment with the employer; the employee's death was caused by a risk which was neither "inherent or incidental to the employment" nor a risk to which the employee "would not have been equally exposed apart from the employment."

See Paredones v. Wrenn Bros., 2014 N.C. App. LEXIS 468 (lexis.com) [2014 N.C. App. LEXIS 468 (Lexis Advance)] (May 6, 2014). See generally Larson's Workers' Compensation Law, §§ 4.02, 66.03 (lexis.com) [4.02, 66.03 (Lexis Advance)].

Case #2: Family Argument Over Nigerian Investment Scam Turns Ugly, Injury Claim Not Compensable
An Iowa appellate court affirmed a finding that a worker's injuries were not accidental—and, therefore, not compensable—when she fell to the floor after being "bumped" by her brother, who was also a co-worker. Evidence suggested the employer was owned by the worker's husband and the worker's brother, that her husband had been convicted of tax fraud in the wake of his use of company funds in a Nigerian investment scam, and that the worker's brother had assisted in the prosecution of the case, which resulted in the worker's husband serving eight months in a federal prison. Further evidence suggested that following her husband's conviction, the worker had apparently asked a friend to find her brother and "break his legs," that the worker and her husband tried to have criminal charges brought against the worker's brother for an incident involving another relative, and finally, after the worker's "fall," both the worker and her husband told law enforcement officials that the worker's brother intentionally knocked the worker down. The court indicated the evidence was sufficient to persuade a reasonable person that the worker's brother acted intentionally and for reasons personal to the worker.

See Dillavou v. Plastic Injection Molders, Inc., 2014 Iowa App. LEXIS 873 (lexis.com) [2014 Iowa App. LEXIS 873 (Lexis Advance)] (Aug. 27, 2014). See generally Larson's Workers' Compensation Law, § 42.01 (lexis.com) [42.01 (Lexis Advance)].

CASE #3: Food Store Manager's Murder by Jealous Assailant Arose Out of and In Course of Employment
A Florida appellate court held that fatal injuries sustained by a food store manager who was struck and run over by a car driven by a man who claimed to have been reacting to the decedent's alleged sexual harassment of the man's girlfriend, who worked as a cashier at the food store, were held to have arisen out of and in the course of the employment in spite of the personal animosity that triggered the event. Reversing a decision of a state Judge of Compensation Claims and quoting *Larson's Workers' Compensation Law*, the appellate court found that the nature of the work environment—at the time of the attack, decedent was collecting shopping carts in the employer's parking lot—did, indeed, place the decedent at risk incident to the hazards of his industry and that while the decedent had no apprehension of personal animosity of a co-worker's jealous boyfriend, there was no question that the "genesis" for the dispute giving rise to the fatal injuries was in the workplace.

See Santizo-Perez v. Genaro's Corp., 138 So. 3d 1148 (lexis.com) [138 So. 3d 1148 (Lexis Advance)] (Fla. 1st DCA 2014). See generally Larson's Workers' Compensation Law, § 8.01 (lexis.com) [8.01 (Lexis Advance)].

CASE #4: Gun-Wielding Store Manager's Death While Attempting to Stop Robber Found Compensable
A Pennsylvania appellate court, reversing a decision of the state's Workers' Compensation Appeals Board, determined that a convenience store manager did not abandon his employment and, in fact, was actually furthering the business affairs of his employer when he was severely injured—the injuries eventually resulting in his death—while attempting to stop a thief from leaving the employer's premises after an attempted robbery at the store. The employer contended that the employee, who was struck and run over by an automobile being driven by the would-be robber as the latter fled the scene, had violated a positive work rule by possessing a gun on the employer's premises. The employer also contended that the employee "had embarked on a vigilante mission" to apprehend the fleeing suspect in an already foiled robbery attempt, that the employee and others had been told, "not to be heroes," and that the actions of the employee removed him from the course and scope of the employment. The employee's dependents countered that there had been many robberies in the area, that the employee had actually shot a thief robbing the employer's store in 2007, and that the employer knew that the employee carried the gun and condoned the action. The appellate court emphasized that the entire incident had been fast-moving, that the employee had been pursuing his employer's interests—not his own—and that the employee's pursuit of the robber was not so far removed from his duties as a manager as to constitute a deviation from the employment.

See Wetzel v. Workers' Comp. Appeal Bd. (Parkway Service Station), 92 A.3d 130 (lexis.com) [92 A.3d 130 (Lexis Advance)] (Pa. Commw. Ct. 2014). See generally Larson's Workers' Compensation Law, §§ 28.01, 33.01 (lexis.com) [28.01, 33.01 (Lexis Advance)].

CASE #5: Assistant Manager's PTSD Claim Tied to Murder-for-Hire Scheme Found Compensable
A New York appellate court, affirming a decision of the state's Workers' Compensation Board, held that the exacerbation of a supermarket assistant manager's

preexisting PTSD arose out of and in the course of his employment when, after he called a coworker at her home to discuss a work-related matter, the coworker's husband, who thought that the manager and his wife must be having an affair, targeted the manager in an unsuccessful murder-for-hire scheme. The irate husband also contacted the assistant manager's supervisor regarding the suspected affair, resulting in an investigation and the subsequent decision by the assistant manager to seek a transfer to another store. The appellate court indicated that if there was any nexus, however slender, between the motivation for the assault and the employment, an award of workers' compensation benefits was appropriate. Here, the work-related phone call from claimant to his coworker's home was the basis for the subsequent harassment of claimant at his place of employment, the employer's internal investigation and claimant's request for a transfer—all of which exacerbated claimant's preexisting PTSD.

See Matter of Mosley v. Hannaford Bros. Co., 119 A.D.3d 1017, 988 N.Y.S.2d 303 (lexis.com) [119 A.D.3d 1017, 988 N.Y.S.2d 303 (Lexis Advance)] (2014). See generally Larson's Workers' Compensation Law, § 8.02 (lexis.com) [8.02 (Lexis Advance)].

CASE #6: Recreational Drug User Entitled to Inpatient Care to Treat Worsening Drug Problem Following Robbery and Work-Related Shooting
A retail employee was shot multiple times by assailants who returned to the employee's place of business after a robbery in apparent retaliation for the employee's reporting the incident to police. The employee claimed to have developed PTSD as a result of the incident. The Supreme Court of Nebraska held that the employee was not only appropriately awarded medical and disability benefits for his PTSD condition, but the employee was also entitled to inpatient care to treat a pre-existing non-prescription drug problem that the employee claimed had worsened due to his anxiety over the shooting. Evidence suggested that even after the shooting, the assailants contacted the employee yet again, threatening the employee and his family. The court held that the employee, who admitted he was a recreational drug user prior to the shooting, was entitled to additional benefits to treat his worsening addiction.

See Kim v. Gen-X Clothing, Inc., 287 Neb. 927, 845 N.W.2d 265 (lexis.com) [287 Neb. 927, 845 N.W.2d 265 (Lexis Advance)] (2014). See generally Larson's Workers' Compensation Law, § 66.03 (lexis.com) [66.03 (Lexis Advance)].

CASE #7: Attorney's "Rainmaking and Networking" in Connection With Harley-Davidson Rally Was Not Sufficiently Connected to Employment to Support Claim
A Wisconsin appellate court affirmed a finding by the state's Labor and Industry Review Commission that concluded an attorney was not performing services growing out of and incidental to his employment at the time he was involved in a motorcycle accident that rendered him a quadriplegic. The attorney contended his compensation at the firm was based on two components: (a) the work he performed; and (b) clients brought into the firm, regardless of who performed the legal work. He contended that in order to stir up business for the law firm he joined a poker group comprised of small business owners, including Franken, a real estate appraiser. The law firm reimbursed him for snacks he supplied for the poker nights and the attorney indicated his participation was part of the overall marketing that he did for the firm. He sustained serious injuries while riding Franken's motorcycle as the two traveled, along with their wives, to a Harley-Davidson motorcycle rally. The appellate court agreed with the Commission's determination that even if the poker games could be considered client entertainment, it did not necessarily follow that every trip or activity the attorney and Franken undertook together was client entertainment or business-related networking. Based on the court's review of the record, it concluded that there was credible and substantial evidence to support the Commission's conclusion that the motorcycle trip was "simply a social outing among friends who occasionally did business together."

See Westerhof v. State Labor and Indus. Review Comm'n, 354 Wis. 2d 621, 848 N.W.2d 903 (lexis.com) [354 Wis. 2d 621, 848 N.W.2d 903 (Lexis Advance)] (2014). See generally Larson's Workers' Compensation Law, § 22.01 (lexis.com) [22.01 (Lexis Advance)].

CASE #8: Attendant Care-Providing Mother's Injuries at Hands of Knife-Wielding Son Are Compensable
Reversing a decision by the state's Workers' Compensation Appeal Board, a divided Pennsylvania appellate court applied the bunkhouse rule to support an award of benefits to a woman employed under a state-funded program to provide attendant care services at her residence for her adult son when she was brutally attacked by the knife-wielding son while she slept. The son, who needed care because his leg had been amputated, had previously suffered from drug dependency, but had shown no signs of violent behavior. Quoting *Larson's Workers' Compensation Law*, the

majority of the appellate court reasoned that the mother's attendant care duties required that she be on the premises. That she was sleeping and not performing actual services at the time of the attack did not control.

See O'Rourke v. Workers' Comp. Appeal Bd. (Gartland), 83 A.3d 1125 (lexis.com) [83 A.3d 1125 (Lexis Advance)] (Pa. Commw. Ct. 2014). See generally Larson's Workers' Compensation Law, § 24.03 (lexis.com) [24.03 (Lexis Advance)].

CASE #9: Traveling Employee Rule Doesn't Save Drunken Employee's Dune Buggy Claim A claims adjuster who had been assigned remote duties in connection with the devastation to Galveston Island caused by Hurricane Ike, and who drank one evening to the point of intoxication, did not remain within the scope of employment under the traveling employee doctrine, held a Washington appellate court. Accordingly, injuries sustained when he apparently fell from some sort of vehicle while "riding in [the] dunes" were not compensable. The court acknowledged that a traveling employee is generally considered to be in the course of employment continuously during the entire trip. There is an important exception, however, if the employee engages in a distinct departure on a personal errand. The court added that the proper inquiry in determining if a traveling employee has left the course of employment is "whether the employee was pursuing normal creature comforts and reasonably comprehended necessities or strictly personal amusement ventures." The employee admitted that on the evening of the injury he had been drinking heavily and could not really recall the circumstances leading up to the incident. The court held that becoming intoxicated was not necessary to the employee's health and comfort. Moreover, without evidence as to how the accident occurred, any theory offered by the employee was purely speculative.

See Knight v. Department of Labor and Indus., 181 Wn. App. 788 (lexis.com) [181 Wn. App. 788 (Lexis Advance)] (2014). See generally Larson's Workers' Compensation Law, § 25.01 (lexis.com) [25.01 (Lexis Advance)].

CASE #10: Court Affirms PTSD Award to Physician's Assistant Threatened by Surgeon During Surgical Procedure A New York appellate court affirmed a decision of the state's Workers' Compensation Board that awarded workers' compensation benefits for a stress-related injury sustained by a cardiothoracic physician's assistant ("PA") who contended she was threatened with physical violence by a surgeon during an hours-long procedure in the operating room. The PA sought psychiatric treatment shortly thereafter and filed a claim for PTSD and adjustment disorder. Following a hearing, the Workers' Compensation Board concluded that claimant had sustained a compensable injury due to work-related stress. The employer contended that the surgeon's verbal threat could not have given rise to a compensable stress claim, noting mitigating factors such as the presence of others in the operating room and the PA's familiarity with the surgeon's "difficult" personality. Acknowledging that in New York, in order for a mental injury premised on work-related stress to be compensable, the stress must be greater than that which usually occurs in the normal work environment, the appellate court indicated the Board's decision was supported by the evidence. The Board found that threats of physical violence made by the surgeon constituted greater stress than that which normally occurs in similar work environments. The court said it could not "reject the Board's choice simply because a contrary determination would have been reasonable."

See Lucke v. Ellis Hosp., 119 A.D.3d 1050, 989 N.Y.S.2d 528 (lexis.com) [119 A.D.3d 1050, 989 N.Y.S.2d 528 (Lexis Advance)] (3rd Dept. 2014). See generally Larson's Workers' Compensation Law, § 56.04 (lexis.com) [56.04 (Lexis Advance)].

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